IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-07-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

C.M.A.No.671 OF 2002

1.Mariammal
2.Chinammal
3.Veeramuthu
4.Manivel (Minor)
(4th Appellants is a minor
and rep by mother and next friend
Mariammal ... Appellants

-vs-

1.Angaiyarkanni
2.National Insurance Co.Ltd.,
66, Greams Road,
Chennai-6. ... Respondents

For appellants : Mrs.S.Sarumathy

For respondent 2 : Mr.S.Vadivel

Appeal against the award, dated 07.11.2000, made in MACT O.P.No.1 of 1997 on the file of Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

J U D G M E N T

Claimants have filed this appeal against the disallowed portion of the award, dated 07.11.2000, made in MACT O.P.No.1 of 1997, on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Madras, in awarding a compensation of Rs.2,83,220/-, as against the claim of Rs.5,00,000/-, for the death of one Ganesan.

2. Claimants are wife, mother, father and son of the deceased.

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3. On 05.01.1996, at about 13.00 hours, when the deceased Ganesan was walking along the N.S.C.Bose Road, a bus, bearing registration No.TME-145, driven by its driver in a rash and negligent manner, dashed against the said Ganesan, as a result of which he died on the spot. First respondent is the owner of the bus, which is insured with second respondent.

4. The Tribunal factually found that the accident occurred due to rash and negligent driving of the bus by its driver and, therefore, compensation has to be paid by second respondent, who is the insurer of first respondent.

5. No appeal is filed by the respondents against the said finding of the Tribunal and, hence, it has become final.

6. Learned counsel for the appellants/claimants has submitted that the award of Rs.2,83,220/- in toto, under different heads, is too low and, hence, the compensation should be enhanced.

7. P.W.1, wife of the deceased, deposed that her husband was earning a sum of Rs.100/- per day, by working as a mason, and that he was contributing a sum of Rs.2,500/- per month to the family. As per Ex.P-1, post-mortem report, age of the deceased was 32 years at the time of accident.

8. The Tribunal assessed the dependency of the claimants at Rs.1,180/- per month and calculated the annual loss of income at Rs.14,160/-. Since the deceased was aged 32 years, the Tribunal applied multiplier '17' and fixed the total loss of income at Rs.2,40,720/-.

9. In this context, learned counsel for the appellants placed reliance upon a Full Bench decision of the Hon'ble Supreme Court in Supe Devi v. National Insurance Co.Ltd., 2002 ACJ 1166, wherein, it was held that when the deceased was aged about 32 years, the proper multiplier to be adopted is '17'. The relevant portion of the said decision reads as follows :

> "8. While considering the question of just compensation payable in a case all relevant factors including the appropriate multiplier are to be kept in mind. The position is well settled that the Second Schedule under Section 163-A to the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline while determining the compensation under section 166 of the Act. In that view of the matter, there is no reason why multiplier

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of 17 should not be taken as the appropriate multiplier in this case."

10. Considering the fact that the deceased was aged 32 years at the time of accident and he died leaving behind his wife, a minor son and parents, I feel, his monthly income can be fixed at Rs.2,700/-. Taking it into account, if we deduct 1/3 towards 'personal expenses', the monthly dependency of the family comes to Rs.1,800/-. Thus, the annual loss of income would be Rs.21,600/-. Applying multiplier 17, total loss of income for the family has to be fixed at Rs.3,67,200/-, as against Rs.2,40,720/-, fixed by the Tribunal. The Tribunal also awarded a sum of Rs.10,000/- towards 'loss of consortium' for wife, namely, first appellant, which, I feel, is on higher side. Instead, a sum of Rs.5,000/- can be awarded under the said head. Further, a sum of Rs.10,000/- each was awarded by the Tribunal for respondents 2 to 4 for 'loss of love and affection', which, in my view, is not admissible. However, a sum of Rs.2,500/- can be awarded towards 'loss of estate', which was not awarded by the Tribunal. Under the head 'funeral expenses', the Tribunal awarded a sum of Rs.2,500/-, which can be reduced to Rs.2,000/-.

11. Thus, award of the Tribunal is enhanced by Rs.93,480/-, taking the total to Rs.3,76,700/-. As such, the respondents are directed to deposit the enhanced amount with the Tribunal, with interest at 7.5% per annum from the date of claim petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order. Out of the enhanced amount, first appellant is entitled to Rs.63,480/- and appellants 2 to 4 to Rs.10,000/- each. Except fourth appellant, who is a minor, the other appellants are at liberty to withdraw their shares. As regards fourth appellant, his share shall be kept in Fixed Deposit until he attains majority. On other aspects, award of the Tribunal stands.

12. With the above modification of the award, this appeal is allowed in part. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Motor Accident Claims Tribunal
(Chief Judge, Court of Small Causes),
Chennai.

2. The Registrar
Court of Small Causes, Madras.

1 cc to Mr.S.Vadivel, Advocate, Sr.40773
1 cc to Mr.P. Manavalan, Advocate, Sr. 40701

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